IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8588 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LAXMINARAYAN M RATNU

Versus

STATE OF GUJARAT

Appearance:

MR NIKHIL CARRIEL for MR BP TANNA for Petitioner

MR HH PATEL AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/03/2001

ORAL JUDGEMENT

#. Heard learned counsel for the parties.

#. In this petition, under Article 226 of the Constitution of India, the petitioner praying for

issuance of writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus by directing the respondents to promote the petitioner to the cadre of Taluka Development Officer, at least from the date on which his immediate junior Kumari Jamuben Chaudhari came to be promoted in June, 1977. He further prayed for the consequential benefits followed from this deemed date of promotion to be granted to him. He is claiming this benefit on the ground that he belongs to Scheduled Tribe category but this claim was not accepted.

#. In the reply to the Special Civil Application in para 6 thereof the respondents admitted that the dispute whether the petitioner belongs to Scheduled Tribe category or not has already been finalised and the petitioner was considered as Scheduled Tribe. It is submitted that until this final decision taken by the competent authority his case was not considered as Scheduled Tribe candidates. After accepting the claim of the petitioner to the aforesaid category still his case for promotion was not considered and for this the explanation of the respondent in para 7 of the reply is as under :-

> "I further state and submit that this Hon'ble Court has passed an order in Special Civil Application No.720 of 1986 whereby, interim order is passed restraining the State Government from implementing and enforcing the order dated 4.2.1986. A copy of the same is annexed herwith and marked as Annexure-I. By the interim order, it was directed by this Hon'ble Court that only qualified persons are required to be promoted. In the present case, the petitioner has not passed the examination as per the rules and therefore, he is not qualified for promotion and as per the interim order of this Hon'ble Court whereby it is directed that only promotion is to be given to the qualified persons, and therefore also, the case of the present petitioner cannot be considered. The Special Civil Application No.720 of 1986 is still pending before this Hon'ble Court."

#. The officer, who has sworn the affidavit in support of the reply-affidavit has not cared to read the order dated 4.2.1986 passed by this court in Special Civil Application No.720 of 1986. Where this order would have been read by him then the reply would have been otherwise. In the affidavit though he has stated that

the copy of this order of the court is annexed herewith and marked as Annexure-I but same is not annexed to the reply affidavit. That goes to show that without reading that order this officer has filed this affidavit and therein he has taken stand contrary to what is contemplated in the order passed by this court. Be that as it may. The Special Civil Application No.720 of 1986 has already been dismissed and whatever the hurdle which was there in the way of the respondents to consider the case of the petitioner for promotion to the cadre of Taluka Development Officer does not remain.

#. In the result, the Special Civil Application succeeds and the same is allowed the respondents are directed to consider the case of the petitioner for promotion to the post of TDO from June, 1977, on which date his junior Kumari Jamuben Chaudhari was promoted. In case, the petitioner is found suitable for promotion to the post of TDO with effect from June, 1977, he shall be entitled to all consequential benefits follow therefrom. Rule is made absolute in these terms. No order as to costs.

(S.K.Keshote, J.)
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